

Lesson 21. Article 1, section 3.  
The Senate – Part II

Tonight we continue the structure of the Senate.

**Provision 31 (From Article 1.3.2)**

When the Senate convenes, it shall be divided into three classes: The first class's term will expire in two years, the second in four, the third in six years. Once this order is established, one third of the senate will come up for election (appointment) every two years. (Question 1)

Even though the founders wanted long, six year terms for Senators, they worried that prolonged service as one body would breed corruption and a desire for lifetime or hereditary appointments. So this scheme was devised to keep the senate members rotating, but keep the body – as a whole – in continuity.

The quotation from James Iredell on page 307 seems rather acerbic, assuming 2/3 of the Senate at any one time will be dishonest and corrupt. "... two-thirds must concur in the most important cases; so that, if there be only one honest man among those two-thirds that remain, added to the one-third which has recently come in, this will be sufficient to prevent the rights of the people being sacrificed..."

A brief aside: James Iredell is quoted quite often in this book, and yet his biography doesn't even appear in the list at the beginning? Why? Because he wasn't a signer of the Constitution, nor was he a delegate to the convention. But he was a member of the North Carolina convention to ratify the constitution. His reasoned and impassioned advocacy for the document gained him sufficient notoriety that President Washington appointed him one of the original justices to the Supreme Court.

The other quote, from "Parsons," on that page likewise is not listed in the biographies. This could be Theophilus Parsons of Massachusetts or Samuel Parsons of Connecticut. I'm not sure. Both were in the constitutional ratification conventions in their respective states.

Back to the subject:

I have not been able to discover how new Senators are assigned term dates when a new state is admitted to the union. How do they keep the one-third rotation every two years?

**Provision 32**

When a vacancy occurs in the Senate, the legislature of that state shall appoint another in his stead. If the legislature is not in session, the governor may make a temporary appointment until the legislature convenes. (Question 2)

Compare this to provision 22, which states: If the seat of a Representative becomes vacant, the governor of that state shall call for a new election.

No mention of a temporary fill-in.

Why would a vacancy in the Senate be treated so differently from the House?

The Senate, being much smaller, a vacancy would have a greater impact. Also, since each senator represents an entire state, not just a small district, more people would be without representation in the

Senate.

The 17<sup>th</sup> Amendment, as you know, changed how Senators are elected. There are also changes regarding filling a vacancy. But to be honest, it sounds like it was written by lawyers...

“When vacancies happen... in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.”

### **Provision 33**

In order to qualify as a Senator, a person must have reached the age of 30 years by the time that person is sworn into office. (Question 3)

The founders felt a bit more maturity was required for a senator than a representative. Again, an arbitrary number.

### **Provision 34**

A Senator must have been a citizen of the United States for at least nine years.

Two years longer than for a Representative. Since a senator deals with foreign treaties as well as domestic issues, it was decided a very long time as an American was required to make a wise Senator. All attachments and connections with another country and knowledge and association with other forms of government would require a long time to divest before someone could be an effective Senator.

### **Provision 35**

A Senator must be and inhabitant of the state which he is appointed to represent. (Question 3)

Note that some states have rather lax definitions of what an inhabitant is. New York, for example: Both Bobby Kennedy and Hillary Clinton were approved to run for senate simply by buying a house within New York. No real requirement that the house has to be lived in.

### **Provision 36**

The vice president shall serve as the presiding officer over the Senate. (Question 4)

Do you suppose for even a moment, that a vice-presidential candidate is chosen because of his skills at presiding over a body in which he has no power? Of course not. Vice presidential candidates are chosen to help the top of the ticket get elected. Sometimes it's purely regional (I'm from the north, I need someone from the south), sometimes it's to add credibility (I know nothing about foreign affairs, I need someone who has this experience).

The vice president is the only position in the federal government spanning two branches. (Not counting judges who legislate, executive branch officials who legislate by regulation, and legislation by presidential executive orders) Since the “President of the Senate” is not really a member of the senate, he has no power compared with the Speaker of the House. He is not selected by the members to lead. He may belong to the minority party. He cannot take part in debates. He does not manage legislation or schedule votes.

and

### **Provision 37**

The vice president (in his role as president of the Senate) cannot vote.

– except to break ties – which has happened about 200 times. (Question 4)

### **Provision 38**

The Senate shall choose its own clerks, sergeant at arms, and all other officers needed to function effectively.

Majority and Minority Leaders. In essence, the Majority Leader is the counterpart to the Speaker of The House. (Question 5)

Committee Chairmen: Assigned by the Majority Leader. Laws must pass through committee before being presented to the Senate floor for a vote. The committee chairmen decide which bills to debate, which to forward to the floor, and which ones languish, untouched, in the committee.

Floor Leaders and Party Whips: Designated by each party. They keep Senators aware of upcoming legislation and try to make certain each Senator votes according to party desire.

Secretary of the Senate: Records all votes, certifies the passage of legislation.

Sergeant at Arms: Head of security for the Senate. Commands the Capital Police unit on a rotating basis with his counterpart in the House.

Chaplain of the Senate: (further proof of the founders' desire for separation of church and state)

Parliamentarian: Advises on parliamentary rules. Indicates which committees have jurisdiction over which bills.

Pages: High school students from across the country used as foot messengers.

(Question 6)

### **Provision 39**

The Senate will choose one of its own members to serve as President Pro Tempore, who will preside when the vice-president is absent.

President Pro Tempore: This position is nearly always a member of the majority party. Elected by the members. The current one is Patrick Leahy of Vermont. (Snarky aside: Since the President of the Senate – whether “acting” or not, cannot debate and cannot vote, it's assumed by some that this position is usually held by someone the majority party feels it can do without for what might be an extended period of time.) This just might explain why Robert C. Byrd was elected President Pro Tempore for 12 years.

### **Provision 40**

The Senate shall have exclusive powers to hear impeachment proceedings which the House of Representatives has brought against any federal judge or executive branch official. (Question 7)

As mentioned before: Impeachment was modeled after the process used in the British Parliament, which came about as a compromise; Parliament got tired of making laws that the king's officers would refuse to enforce so Parliament refused to raise money for the king – until impeachment authority was granted them.

The founders considered the Supreme court too small (easier to bribe) than the Senate. Also, since the president appoints Supreme court justices, some might be “beholding” to the president and could not convict him.

It's important to remember, that even though some call impeachment proceedings a trial, it is NOT a

court of law. The worst sentence handed down by the senate is removal from current office and a ban on holding office in the future. (More on this later.)

#### **Provision 41**

When the Senate is sitting in its judicial capacity to try impeachment cases, all members must be placed under oath or affirmation to perform their duty honestly and with due diligence.

A separate oath was designed to impress the Senators the sacred responsibility connected with this proceeding. A sacred responsibility, sworn before God to bind the conscience.

#### **Provision 42**

During impeachment of the President of the United States, the Chief Justice shall preside over the Senate. (Question 8)

For obvious reasons, it would be a conflict of interest for the vice president to preside over impeachment of the president.

Although the Chief Justice may have been appointed by the president, he would be only the presiding officer with a much lessor conflict of interest than the vice president.

#### **Provision 43**

No conviction of impeachment charges unless there is a concurrence by two-thirds of the members in attendance.

Senate rules define a quorum (the minimum needed to do any business) as half the senators plus one. Right now that would be 51 senators. Two-thirds of 51 is 34. If all Senators are present, then it would require 67 votes to convict. (Question 9)

#### **Provision 44**

If a judge or executive officer is convicted of impeachment charges, the punishment shall not extend beyond his removal from office and declaring him disqualified from holding ANY federal office of honor, or trust in the future. (Question 10)

Why not cart him off to prison if convicted? Because this conviction comes from the legislative branch, not the judicial. Later on, when we look at Article 1, section 9, we'll see that congress is forbidden from issuing a "Bill of Attainder." A Bill of Attainder was used in English law to yank titles, land and castles etc. away from noblemen accused of serious crimes. The king didn't even need the bother of a trial.

This is the same reason that congress members found guilty of ethical or other violations can only be expelled.

#### **Provision 45**

A person removed from office by impeachment proceedings may still be charged, tried and punished for any civil or criminal violations of the law which led to the impeachment. (Question 11)

This is another reason impeachment proceedings are not considered a court of law; if it were, then the double jeopardy rule would kick in and the guilty individual could not be tried for the same crimes again.

If I recall correctly, after Bill Clinton was impeached but not convicted, he was convicted of perjury in an Arkansas court which sentenced him to lose his law license in that state. What a pity, I'm sure he was just busting to get back to Arkansas so he could open up a law office.

**Summary:** The founders created a Senate unlike any other one the planet or in history. If you look at the lists of officers created for the House and Senate, you might suspect someone was peeking over a shoulder since the lists are so similar. Yet representation, like power, was separated; with the House representing the people, the Senate the states and the president the nation.

The founders spent a lot of time devising the rules for impeachment, and assumed this a powerful weapon against corruption and lawless behavior in government. Why hasn't it worked out as they planned? For one, it has been extremely rare. There have been thousands of instances where the chief executive has overstepped his Constitutional constraints. Thousands. Yet only two impeachments – with zero convictions.

It's understandable that the congress would not wish to inflict such discourse and turmoil upon the nation on a weekly or monthly basis. Also the office of the president must be honored, even if the inhabitant falls short. Deference must be shown to the only federal official elected by We the People. That's why only “High crimes and misdemeanors,” are to be considered.

But the main reason impeachment has been such a feeble tool against reprehensible behavior is something unforeseen by our founding fathers: political parties. The men who designed the Constitution never imagined there would one day be politicians who place the good of their party over the good of the nation. As we've lately seen, if either house of congress is held by the same party as the president then he is all but immune from impeachment. For if the House belongs to the same party they will not issue articles of impeachment, and the Senate will not convict a president of their party.

Next month. . .

Since we have now defined both the House and Senate, we will venture into the rules governing the actions of the congress.